IN THE

SUPREME COURT OF THE UNITED STATES

NO. 74-63

JOHN R. STEGMANN,
Petitioner

-vs-

STATE OF NORTH CAROLINA,
Respondent

ON WRIT OF CERTIORARI
TO THE
SUPREME COURT OF NORTH CAROLINA

RESPONSE OF RESPONDENT,
STATE OF NORTH CAROLINA,
IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

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CITATION TO OPINION BELOW

The opinion of the Supreme Court of North Carolina is reported at 287 NC ____ (1975) and is appended to Petitioner's petition.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court pursuant to 28 USC §1257(3).

QUESTION PRESENTED

1. Whether the imposition and execution of the sentence of death for the crime of rape under the law of North Carolina violates the Eight or Fourteenth Amendments to the Constitution of the United States?

STATEMENT OF THE CASE

This is a Petition for a Writ of Certiorari to review the judgment of the Supreme Court of North Carolina, entered on April 1, 1975, affirming Petitioner's conviction and death sentence. Petitioner, John Richard Stegmann, was sentenced to die on May 16, 1974 in the Superior Court of Cumberland County, North Carolina upon conviction of the offense of rape. He was also sentenced to imprisonment for life upon conviction of the offense of kidnapping. Petitioner's sentence of death was imposed under North Carolina General Statute 14-21 as construed by the Supreme Court of North Carolina in *State v. Waddell, supra,* and related cases which are already before the court.

ARGUMENT

I

THE IMPOSITION AND EXECUTION OF THE SENTENCE OF DEATH FOR THE CRIME OF RAPE UNDER THE LAWS OF NORTH CAROLINA DOES NOT VIOLATE THE EIGHTH OR FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The petitioner asserts that the penalty of death is cruel and unusual punishment for non-injurious rape offenses. He also urges that the procedure through which the death penalty is applied under the law of North Carolina violates the Eighth and Fourteenth Amendments. Petitioner's assertions, in essence, question the propriety of the North Carolina Legislature to prescribe punishment. There is no valid reason for the Court to grant certiorari at this time to hear this question.

This Court granted certiorari to petitioner Jessie Thurman Fowler in the case of *Fowler v. North Carolina*, No. 73-7031 (Oct. Term, 1974) which, although a murder case, concerns both the issue of the constitutionality of the death penalty and the question as to whether penal policy is more appropriately to be reviewed by the Legislature than by the Judiciary. Extensive briefs were submitted in that case and oral

arguments were made before this Court on April 21, 1975. Hence, petitioner's question has, in essence, been accepted for hearing by the Court, and oral arguments before this Court have already been made. Therefore, any decision in this case should be dependent upon the outcome of the *Fowler* case, and the petition to grant certiorari should be denied.

Prior to the *Waddell* decision, under the North Carolina rape statute, (N.C.G.S. 14-21), the jury had the right to recommend life imprisonment for the capital crime of rape. *Furman v. Georgia, supra*, the Supreme Court of North Carolina ruled that the death penalty portion of the rape statute was constitutional, but the portion concerning the jury's discretion was not and that any person convicted of a capital offense prior to the *Waddell* decision and who had been sentenced to death, would have the sentence communted to life imprisonment. In all capital cases after *Waddell* the trial court was forbidden to allow the exercise of jury discretion in sentencing and upon conviction of a capital crime, the death sentence was mandatory. The rape statute was amended by the North Carolina legislature through the ratification of N.C.G.S. 14-21 (Supp. 1974) which divided the crime of rape into two categories, i.e., First and Second Degree Rape. But this enactment did not become effective April 8, 1974. Consequently, there existed a period of time between the decision in *Waddell* and the ensuing action of the Legislature, in which numerous individuals received death sentences under a statute which had been, in effect, established by the Judiciary rather than the Legislature.

In order to remedy this situation, the 1975 Session of the General Assembly of North Carolina enacted House Bill 953, a copy of which is appended to this response. This statute provides that defendants who have been convicted of rape committed after January 18, 1973, and prior to April 8, 1974, and who have had the verdict and sentence of death sustained on appeal, may apply to the judge who presided at the rape trial resulting in the sentence of death, or, if said judge is unavailable, to a resident Superior Court Judge of the judicial district in which the rape trial was held, to determine whether the defendant could have been punished by death had the rape been committed by him after the ratification of N.C.G.S. 14-21 (Supp. 1974)

Whereas the date petitioner's conviction falls within the time span qualifying him for the special judicial determination provided by House Bill 953, the appellate channels which exist under North Carolina Law have not been totally exhausted by the petitioner. Therefore, the State would submit that the Petition for a Writ of Certiorari to the Supreme Court of North Carolina should be denied.

For the information of the Court in a very recent decision by the North Carolina Supreme Court, *State v. Woodson*, _____ NC ____, ____ SE 2d _____ (Filed June 26, 1975) held by a unanimous vote that the application of the death sentence pursuant to Chapter 1201, 1973, Session Law, ratified April 8, 1974, Codified as G.S. 14-17, which makes first degree murder committed after April 8, 1974 punishable by death not a violation of the cruel and unusual punishment clauses of the Constitution of the United States and North Carolina. Justice Exum in his concurring opinion clearly and distinctly succincently points out his personal opposition to capital punishment maintaining that it is not in his view a wise public policy, but that as a judge he does not feel that he can substitute his personal will for that of the legislature merely because he disagrees with its chosen policy.

CONCLUSION

It is therefore respectfully submitted that the question concerning the constitutionality of the death penalty as applied under the Law of North Carolina is already before this Court; and that the petitioner has not fully exhausted the channels for appellate review provided under North Carolina Law. The Petition for Writ of Certiorari to the Supreme Court of North Carolina should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I am admitted to practice law before the Supreme Court of the United States; and that I have served three copies of the foregoing Response of the State of North Carolina in Opposition to Petition For Writ of Certiorari to the Supreme Court of the United States by depositing of the same to Counselor for the Petitioner properly addressed to Mr. Kenneth Glusman, Suite 704 Wachovia Building, Post Office Box Drawer 209, Fayetteville, North Carolina 28302; and depositing same in the United States Post Office at Raleigh, North Carolina, with first class postage affixed.

This the 29th day of July, 1975.

James E. Magner, Jr.
Assistant Attorney General

APPENDIX

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1975
RATIFIED BILL

Chapter 749

House Bill 953

AN ACT RELATING TO PUNISHMENT FOR RAPES COMMITTED PRIOR TO THE EFFECTIVE DATE OF CHAPTER 1201, SESSION LAWS OF 1973.

The General Assembly of North Carolina enacts:

Section 1. The provisions of G.S. 14-21, as rewritten by Section 2 of Chapter 1201 of the Session Laws of 1973, shall apply in all trials hereafter conducted for rapes committed after January 18, 1973, and prior to April 8, 1974, the effective date of Chapter 1201, Session Laws of 1973.

Sec. 2. (a) In cases in which the defendant has been convicted of a rape committed after January 18, 1973, and prior to April 8, 1974, and the verdict and sentence of death are or have been sustained on appeal, the defendant may apply once to the judge presiding at the rape trial resulting in the sentence of death, or, if said judge is unavailable, to a resident superior court judge of the judicial district in which said rape trial was held, to determine whether the defendant could have been punished by death had the rape been committed by him after the ratification of Chapter 1201, Session Laws of 1973.

(b) Said judge shall review a certified transcript of the evidence presented at trial (or if such transcript is not available, the record on appeal), make such independent investigation as he deems necessary to determine the age of the defendant or of the rape victim, and hear arguments or accept Briefs in behalf of the defendant and the State

(c) Thereupon, the judge shall determine the following question:

Is the evidence presented at the defendant's trial, plus additional evidence of the age of the defendant or the age of the rape victim, sufficient to submit the defendant's case to a jury on the charge of first degree rape as defined by G.S. 14-21(a), had the date of the rape been after April 8, 1974?

(d) If the question is answered in the affirmative, the defendant shall remain subject to the sentence of death. If the question is answered in the negative, the judge shall forthwith schedule a hearing for the presentation of evidence relative to resentencing the defendant; after the hearing, the sentence of death for rape previously imposed shall be vacated, and the defendant shall be resentenced as if he had been convicted of second degree rape for a rape committed after April 8, 1974.

(e) There shall be no right of appeal from the determination of the judge, but the Supreme Court of North Carolina may, upon petition for certiorari, allow review of said determination.

(f) In cases of resentencing, the defendant shall be allowed credit for time spent in custody awaiting the execution of the sentence of death.

Sec. 3. An indigent person under sentence of death for a rape committed after January 18, 1973, and before April 8, 1974, shall be entitled to counsel in making one application under this act for each such sentence of death, if he is otherwise entitled under Article 36 of Chapter 7A of the General Statutes of North Carolina.

Sec. 4 This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 4th day of June, 1975.

/s/ James B. Hunt, Jr.
James B. Hunt, Jr.
President of the Senate

/s/ James C. Green, Sr.
James C. Green, Sr.
Speaker of the House
of Representatives